83-292

Office-Supreme Court, U.S.
FILED
JUL 28 1983
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

PATRICK CLOONEY
Plaintiff Appellant

v.

TOWN OF HARRISVILLE
Defendant Appellee

ON APPEAL FROM THE UNTIED STATES

COURT OF APPEALS

FOR THE FIRST DISTRICT

JURISDICTIONAL STATEMENT

PATRICK CLOONEY
56 MERRIMAC ST.
WOBURN, MA.

I. QUESTIONS PRESENTED

A. Whether or not the issues that the Appellant now wants to litigate in the Federal Courts, have been decided in Cheshire County Superior Court and the New Hampshire Supreme Court?

B. Whether or not the Appellant was denied Due Process in the State Courts of New Hampshire?

C. Whether or not the Appellant was denied Due Process in the United States District Court for the District of New Hampshire and the United States Court of Appeals?

D. Whether or not the Cheshire Superior Court erred in denying the Respondent's Requests for findings of fact. (Appendix Exhibit 5 page 9A numbers 7,8,9,10,11,12,13,14,15,16, 17,18,19,20,21,22,23,24,25,26,27,28,29,30, 31,34,35,36,37,39,40,41,42,43,44,45,46,47, 48,49,50,51,53,54,55,56,57,58,59.)?

E. Whether or not the Cheshire Superior Court erred in its' denial of Defendant's REQUEST

FOR RULINGS OF LAW numbers 1,2,3,4,5,6,7, (Appendix Exhibit 5 page 9F)?

F. Whether or not the Cheshire Superior Court erred in allowing Petitioner's Requests for Findings of Fact numbers 3,4,5,8,9,10,11,12, 13 (Appendix Exhibit 5 pages 7,7A and 7B)?

PARTIES

Patrick Clooney

Town of Harrisville

PREFACE TO STATEMENT OF CASE

The facts are that the Appellant is dependant on the United States Supreme Court for Justice. This Justice can be readily accomplished only by reading the Transcript of the sworn testimony of the original trial in the Cheshire Superior Court, before reading the Master's Report. This will show that the evidence does not support the Master's Report, as the New Hampshire Courts erroneously claimed.

If the United States Supreme Court reads the Trial Transcript it will then be granting the Appellant a meaningful hearing, in a meaningful manner and it will then discover that the Appellant's Predecessor was not given notice, not given a hearing, not compensated for the land taking, that the Appellee did not comply with the procedures for Eminent Domain, that the Appellee never got a valid deed and never acquired the Appellant's Property by Adverse Possession, all as erroneously found

by the Master.

Also the Appellant derived his Deed from a Warranty Deed which was granted to his predecessor by the Commissioner of the State of New Hampshire.

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

JURIDSICTION I

Patrick Clooney	)	
V.	)	
Town of Harrisville	)	Action At Law
New Hampshire	)	

Claim of Violation of Civil Rights.
Claim of Violation of Constitutional Rights.

Now comes Patrick Clooney to obtain his Several Rights and Substantive Due Process of Law.

The Plaintiff, Patrick Clooney, is a resident of the Commonwealth of Massachusetts, County of Middlesex, Woburn, Massachusetts, and protected in his conduct by Article Four and Amendment Fourteen of the Constitution of the United States and Article Twelve of the New Hampshire Constitution and being at no time a threat to the life liberty or property of any person.

The Plaintiff states that he is the owner of seventy five acres of land and has paid taxes on said land to the town of Harrisville for over thirty

years.

Plaintiff states the Defendant took some of his land without a hearing, without a deed, without right, without compensation and without evidence.

Plaintiff has exhausted all of his judicial remedies. Plaintiff was greatly damaged as a result of the Defendant's conduct.

Wherefore Plaintiff demands:

1. That his property be returned to him.
2. That he be awarded One Hundred Thousand Dollars (compensatory) damages.
3. That he be awarded One Hundred Thousand Dollars (punitive) damages.

August 26, 1982

Respectfully submitted,

Patrick Clooney

JURISDICTION II

Where the Federally protected Civil and Constitutional Rights have been abridged, resort may be had without exhausting judicial remedies of State Courts. JSCA Title 28 S1343.

Title 28 S1332 Diversity of Citizenship, amount in controversy, costs:

a. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds $10,000.00 exclusive of costs and interest and is between citizens of different states.

A Federal Court has the right, power and authority to decide and determine the entire controversy and all issues and questions involved in the case of which it has properly acquired jurisdiction for the purpose of doing complete justice between the parties and awarding relief as full and complete as the circumstances of the case and the nature of the proof may require.

35 CJS 11 Jurisdiction of

Entire Controversy

August 26, 1982

Patrick Clooney

Date of entry of Judgment from U.S.C.A. was 5/4/83

Date of notice of appeal to U.S.S.C. was 5/8/83

See Jurisdiction above

Article Four and Amendment Fourteen, Constitution of United States

Article Twelve of the New Hampshire Constitution

160:25 Chapter 157 Section 15 N.H. General Laws

Bodie v. Connecticut 491 U.S. 371,378,480 (1971)

STATEMENT OF THE CASE

The Appellant, a Massachusetts resident, owns forty acres of land in Harrisville, New Hampshire. The Town took some of the Appellant's land from his Predecessor without notice, without compensation and without Due Process.

On the Town's Petition to quiet Title, the Cheshire Superior Court held a meaningless hearing which was not appropriate to the nature of the case and could not be characterized as Due Process and violated the Respondent's Right to Due Process under the Fourteenth Amendment.

The State's Supreme Court upheld the Lower Court's decision in a meaningless hearing. The United States District Court for New Hampshire upheld the State Supreme Court's decision in a meaningless manner which was not appropriate to the nature of the case, which could not be characterized as Due Process.

Around 1880 the Manchester and Keene Railroad purchased a mere Right of Way to run a railroad from a Respondent's Predecessor in Title and also purchased an acre of land with a Spring on it from the same predecessor on the same land. Later the Manchester and Keene Railroad was abandoned.

On October 27, 1939, the Town allegedly held a hearing and took the Right of Way by Eminent Domain, but the Town Records indicate that no hearing was held on that date. On July 16, 1976, the Town allegedly purchased a one acre lot with a Spring on it, with no boundaries, out of the same land of the Appellant, from the Boston and Maine Railroad which Railroad never acquired Title by Deed nor by Eminent Domain from the Manchester and Keene Railroad, nor from any of the Appellant's predecessors in Title. The Master at the Superior Court Trail found, without evidence, that the Boston and Maine Railroad acquired Title by Adverse Possession, in a State which prohibits Railroads

from taking by Adverse Possession.

The Town in its' brief to the Supreme Court of New Hampshire admits that the Boston and Maine Railroad never got a Deed to the land in question, yet the Supreme Court of New Hampshire upheld the Superior Court's Decision.

On January 14, 1983 the United States District Court for the District of New Hampshire claims in its' Opinion that it read the Master's report of the Superior Court, which allegedly demonstrate that the order is in full accord with New Hampshire Legal Principles applicable to Petition to quiet Title and cites, Chao v. The Richey Company, Inc. etal No 81-358 (N.H. 12/29/82).

The Chao case was not on point and had nothing to do with Adverse Possession, Eminent Domain nor Title without a Deed.

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SUMMARY OF ARGUMENT

The Appellant's position is that the Appellee did not present any evidence that a Hearing was held on October 27, 1939, and the Appellant's answer raised that issue.

There was no issue raised by the Appellee, in its' Petition, of Adverse Possession, nor was there any evidence of Adverse Possession at the Trial and therefore the land was taken without Due Process.

There was no evidence by the Petitioner in Superior Court that the Boston and Maine Railroad, from whom the Town allegedly got a Deed to the Spring, ever got Title in any form and the Master had no evidence to support a decision and therefore that trial was not a meaningful hearing as required by Due Process.

When the Master found Title to be in the Town, without a Deed, going from the Manchester and Keene Railroad to the Boston and Maine Railroad, then the Superior Court Trial was not a meaningful

hearing appropriate to the nature of the case and was not Due Process.

Since none of the issues of ownership were ever tried lawfully on their merits then Res Judicata does not apply. The hearing by the Supreme Court was based on what the Master of Superior Court claimed and not on the evidence,and that too, was not a meaningful hearing and lacked Due Process.

The decision of the United States District Court indicates that they did not read the evidence but decided it on the Master's report and that also was meaningless and not Due Process.

ARGUMENT

The law requires an opportunity at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case. Boddie v. Connecticut, 401 U.S. 371, 378 (1971)

The State's obligations under the Fourteenth Amendment are not simply generalized ones; rather the State owes to each individual that process, which, in light of the values of a free society, can be characterized as due.
Boddie v. Connecticut, 401 U.S. 371,380 (1971).

Not one of the hearing officers from the Cheshire Superior Court to the Judges of the United States District Court for the District of New Hampshire, based their decisions on the Evidence at the Trial, nor did the U.S.C.A..

Since the nature of the case can only be determined by the evidence as transcribed at the Trial and as that evidence was not considered in a meaningful manner, than none of the hearings were ap-

propriate to the nature of the case.

It is clear from the evidence at the trial that the Boston and Maine Railroad received no Title to the Manchester and Keene Railroad throught the Consolidation Agreement, because the Manchester and Keene Railroad is not mentioned in that Agreement. (Appendix Exhibit 6 page 4 of the Appendix to Exhibit 6).

It is also clear from the evidence that the witness for the Plaintiff, Kendall Lane, had no clear and convincing evidence to prove where the Boston and Maine Railroad received its' Title, (Appendix Exhibit 3 page 29 line 6,(Q.)by Mr. Clooney:"Well knowing Titles as you do, where did the Boston and Maine Railroad get its' Title?" (A.)"In my experience in checking railroad titles in the State of New Hampshire they would have probably obtained it from a taking by the Secretary of State's Office." (Q.) "Do you have anything to show that they took it by Eminent Domain or by taking by the Secretary

of State's Office." (A.) "No, I don't." It was shown by the ReDirect examination, (Appendix Exhibit 3 page 30 line 21) by Attorney Howard Lane, that Kendall Lane's testimony was unclear and could not prove what happened to land owned by the Manchester and Keene Railroad, when Attorney Lane said to Kendall Lane:"Did you find anything to show what happened to the land owned by the Manchester and Keene Railroad?" (A) "Yes, I did. Any real estate which the Manchester and Keene Railroad had some interest in, however that interest may appear, eventually became owned by the Boston and Maine Railroad by Consolidation in 1918." Mr. Lane offered no proof to satisfy the Statute of Frauds.

In further showing the Town's lack of clear Title, the Town's Attorney asked Kendall Lane (Appendix Exhibit 3 page 20 line 19) (Q.) "Mr. Lane are you sure that the Manchester and Keene went directly to the Boston and Lowell and Concord Railroad and that something didn't happen to it

before it ended up there?" (A.) "Well it went, I believe there was, there was some financial problems that the Manchester and Keene Railroad encountered, and I believe that the Trustees of the Manchester and Keene Railroad were replaced and a new Trustee was appointed who, in fact, made the conveyance and I believe that the Trustee that was appointed in 1884 was Thaniel Hale".

One of the issues raised by the Appellant answer at the Cheshire Superior Court was whether or not the Manchester and Keene Railroad Co. was a Predecessor in Title to the Boston and Maine Railroad, which issue was not proven by any writing sufficient to satisfy the Statute of Frauds and at that point the chain of Title of the Town was broken.

Had a careful reading of the Transcript of the evidence been done rather than a careful reading of the Master's report, then there would have been a meaningful hearing appropriate to the nature of the case which could have been characterized as

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Due Process. However, it was not done and therefore it was not Due Process.

The Petitioner's allege in its' Petition, (Appendix Exhibit 1 para. 1) which states in part, "That on October 27, 1939, the Selectmen for the Town of Harrisville conducted a hearing for the purpose of laying out a Town Road along the shore of North Pond along the former Boston and Maine Right of Way, and all of the People affected by the said layout were notified and compensated for said layout, including James A. Venable, who owned the FEE Title to a portion of the land over which said Railroad Right of Way ran. The abutting land owners of the above described highway have all signed a waiver of damage with the exception of the Boston and Maine Railroad whose rights we have acquired by purchase". It is clear from a reading of the Town of Harrisville's records that no hearing was ever held for the purposes alleged on the date alleged, October 27, 1939. It is also clear from

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the testimony of Petitioner's Witness, Mr. Bemis, (Appendix Exhibit 3 page 59 line 8) that James A. Venable, whose name was misspelled (Benneville), in the transcript, was never compensated nor did he waive damages as alleged, nor was notice of a hearing on October 27, 1939, given to him.

Also the Petitioner admitted that James Venable was the fee owner in its' Petition. (Appendix Exhibit 1 par. 1 which states,"including James Venable who owned the fee title to a portion of the land over which said Railroad right of way ran".

The Manchester and Keene Railroad Co. acquired a mere Right of Way only, (Appendix Exhibit 3 page 22 line 21) as stated by Mr. Lane, "a right of way is something less than fee title to the Property. A person owning a Right of Way has use of that Property for Specific Purposes frequently defined by terms of the right of way, sometimes vaguer than that." From that statement it follows that

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the Railroad had a specific purpose to run a railroad and nothing else, so that when the right of way was abandoned, it reverted back to the Grantor or his Grantees, which was James A Venable.

Since none of the issues of ownership were ever tried lawfully on their merits then Res Judicata does not apply.

In addition, there was no evidence that the Manchester and Keene Railroad had a Right of Way of 99 or 100 feet wide. All the Deed from Zophar Willard to August LaPoint, (Appendix Exhibit 3 page 2 of Appelant's Exhibit 6) says is, "also a Right of Way granted Manchester and Keene Railroad Co." It does not specify the width of the Right of Way nor was there any evidence to show the width of the Manchester and Keene Railroad right of way.

There was no evidence to show that the Boston and Maine Railroad acquired the Right of Way lawfully since the Law Prohibits Railroads from acquiring lands by Adverse Possession. New Hampshire General

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Laws 160; 25 Chapter 157 S 15. Furthermore, the survey of the Right of Way by Mr. House was based on his own personal assumptions, without any definite established starting points and is of no value and therefore his survey is invalid as shown by his testimony. (Appendix Exhibit 3 page 45 line 10)

Again referring to the Master's Report, (Appendix Exhibit 5 page 6 line 1) which states: " and long and continuous use, he has no valid basis to claim property rights in derogation of the rights of the Plaintiff." There was no evidence presented to the Master that the Plaintiff used anything but a 12 foot wide portion of the alleged 100 foot layout.

The issue of Adverse Possession was never raised by the Pleadings nor testified about by the Plaintiff.

When the Town allegedly took 100 feet of width of a strip of land to run a 12 foot wide road, it took 7 times more land than was reasonably necessary or an unnecessary 88 feet which was an

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extra 5 acres of Shorefront and woodlot property.

This surplus land it took was not reasonably necessary and is not necessary now and should not be allowed, as reasonable necessity need be shown. Rumney v. Banel 118 N.H. 786.

Neither the Town of Harrisville nor the Railroads took measurements of the highway before the alleged meeting of October 27, 1939 and therefore none of the property was precisely designated in the appropriation papers, because the only measurement recorded and shown in evidence was done on November 1939, one month after the alleged hearing, to which evidence, Clooney objected to in a timely fashion. (Appendix Exhibit 3 page 17 line 5) (Appendix Exhibit 8B) It is only that property precisely designated in the appropriation papers which can lawfully be taken. Capitol Plumbers and Heating Supply Co. Inc. v. State 116 N.H. 513.

The laying out of a highway cannot be sustained

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unless it appears that due recompense was allowed to the landowner and they had an opportunity to be heard upon the question of laying out and on the damages. State v. Reed 38 N.H. 59. Constitution prohibits taking of Private Property for Public uses without compensation. Sibson v. State 111 N. H. 305.

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CONCLUSION

The Master's decision is not binding on the case because it was not supported by the evidence. His findings are in conflict with the evidence at the trial and is erroneous. The Town never received a clear Title to the Spring lot because the Boston and Maine Railroad never received Title from the Manchester and Keene Railroad.

There was no evidence, required by law, to show how the Boston and Maine Railroad received Title from the Manchester and Keene Railroad and the Town, therefore, never received Title to the Spring.

There was no hearing as alleged, regarding the Town Road and therefore the taking was unlawful, and there was no evidence of Open, notorious, continuing Adverse Possession. Therefore, the Master's findings are not supported by the evidence and none of the Process at the prior hearings or trial were fair and just and could not be characterized as due nor were they appropriate to the nature of the case

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and the Appellant was not given a meaningful opportunity to be heard and the State did not fulfill its' promise of the Due Process Clause, nor was there any of the issues ever tried lawfully and Res Judicata does not apply, and therefore, the Decisions should be reversed with costs to the Appellant.

The questions sought to be reviewed were raised in the Superior Court of Cheshire by the Complaint and Answer and were not passed upon by any court.

The reasons why the questions were substantial was because they affected the Appellant's Right to Due Process.

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A P P E N D I X

SUPREME COURT OF THE

UNITED STATES

PATRICK CLOONEY

PLAINTIFF APPELLANT

V.

TOWN OF HARRISVILLE

DEFENDANT APPELLEE

ON APPEAL FROM THE UNITED STATES

COURT OF APPEALS FOR THE FIRST CIRCUIT

APPENDIX

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UNITED STATES DISTRICT COURT FOR NEW HAMPSHIRE

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UNITED STATES COURT OF APPEALS FIRST CIRCUIT

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NOTICE: This Opinion is subject to formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, Supreme Court Building, Concord, New Hampshire 03301, of any errors, other than obvious typographical errors, in order that corrections may be made before the Opinion goes to press. THE CONTENTS OF THIS OPINION MAY BE DISCLOSED AT OR AFTER 8:00 A.M. ON THE DATE THE OPINION BEARS. IF THE OPINION IS RECEIVED BEFORE THAT TIME AND DATE, ITS CONTENTS MUST BE KEPT CONFIDENTIAL.

THE SUPREME COURT OF NEW HAMPSHIRE

Rockingham

No. 81-362

TOWN OF HARRISVILLE

v.

PATRICK CLOONEY

JULY 2, 1982

Patrick Clooney, of Woburn, Massachusetts, by brief and orally, pro se.

Lane & Lane, of Keene (Howard B. Lane Jr., on the brief), by brief for the plaintiff.

MEMORANDUM OPINION

This appeal involves a petition to quiet title to a roadway and a spring located in the town of Harrisville. The town itself claimed ownership of the spring by virtue of a railroad corporation deed as well as by adverse public use for a period exceeding twenty years. It claimed ownership of the roadway by virtue of a 1939 highway layout. In his eight-page report, the Master (Mayland H. Morse, Jr. Esq.) ruled on the eighty requests before him and recommended that title be quieted in the town. The Superior Court (Pappagianis, J.) approved the report

and the defendant appealed.

The essence of the defendant's argument is that there was insufficient evidence upon which the master could conclude as he did. We will not disturb a trial court's ruling when it is supported by the evidence. Jerry's Sport Center, Inc. v. Novick, 120 N.H. 371, 373, 415 A.2d 331, 332 (1980). Having reviewed the record, we cannot conclude that the master erred.

Affirmed.

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW HAMPSHIRE

Patrick Clooney

v. Civil No. 82-465-D

Town of Harrisville

O R D E R

The Town of Harrisville, New Hampshire ("Harrisville"), has disputed with plaintiff herein, Patrick Clooney, a Massachusetts resident, the title of Clooney to certain real estate situate in said Harrisville. Following hearing on a petition to quiet title filed by Harrisville in Cheshire County Superior Court, the Court ruled in favor of Harrisville, and Clooney's appeal in the New Hamsphire Supreme Court was unsuccessful. Town of Harrisville v. Clooney, 122 N.H. ___, 448 A.2d 381 (1982).

Clooney brought the instant pro se action claiming violation of his civil and constitutional

rights, [1] and defendant Harrisville appeared, answered, and moved to dismiss on various grounds.[2] These motions, together with others filed in behalf of the defendant (see n.2, infra) were granted by the Magistrate pursuant to the provisions of Local Rule 11, i.e., failure of plaintiff to interpose objection to such in writing within the time limitations of said rule. At this stage of the proceedings, the Court has for consideration the plaintiff's motion to vacate the judgment subsequently entered pursuant to the granting of the defendant's motions as aforesaid. Our focus is on defendant's motion seeking dismissal on grounds of collateral estoppel and res judicata.

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[1] Although Clooney's transmittal documents indicate that he is a Massachusetts attorney, his handprinted complaint is far from artful. It does, however, claim both diversity, 28 U.S.C. 1332, and civil rights, 28 U.S.C. 1343, jurisdiction, and the Court accordingly presumes that in addition to his constitutional claims of deprivation of due process Clooney poses the right to recover pursuant to 42 U.S.C. 1983.

[2] Defendant also filed motions for attorney's fees and security for costs.

It is the general rule that a state court judgment commands the same res judicata effect in federal court that it would have had in the state court that entered it. 18 Wright, Miller & Cooper, Federal Practice and Procedure 4469, pp. 659-60 (1981). Accordingly, the First Circuit has held that even in the context of a 1983 action res judicata bars the relitigation in federal courts of all grounds for relief that might have been but were not raised in prior state proceedings. Fernandez v. Trias Monge, 586 F.2d 848, 854 (1st Cir. 1978); Ramirez Pluguez v. Cole, 571 (1st Cir. 1978) (per curiam); Lovely v. LaLiberte, 498 F.2d 1261, 1263-64 (1st Cir.), cert. denied, 419 U.S. 1038 (1974). This line of precedent accords fully with the traditional application of the doctrine of res judicata by the New Hampshire Court,[3] and has won

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[3] As applied in New Hampshire, the doctrine of res judicata holds that a final judgment on the merits in one suit absolutely bars a subsequent suit involving the same parties or their privies as to all

apparent approval by the Supreme Court of the United States. See Preiser v. Rodriquez, 411 U.S. 475, 497 (1973); Allen v. McCurry, 449, U.S. 90 (1980).

There are good and sufficient reasons, which the Court will not repeat here, for the reluctance of federal courts to award damages when state governmental entities are accused of unconstitutional interference with the use of land. See Citadel Corporation v Puerto Rico Highway Authority, et al, No. 82-1395 (1st Cir. Dec. 22, 1982); Parel v. Puerto Rico Highway Authority, 621 F.2d 33 (1st Cir. 1980). Careful examination, however, of the basis of plaintiff's motion to vacate the dismissal orders indicates that such are without merit. The Court has carefully read the eight-page Opinion of

matters which were litigated or might have been litigated in the first suit, absent some extenuating circumstances. Town of Nottingham v. Lee Homes, Inc., 118 N.H. 438, 443-44, 388 A.2d 940, 943 (1978). Where defendants have an opportunity to raise a question, procedural or substantive, and fail to do so, res judicata bars further inquiry. Town of Durham v. Cutter, 121 N.H. 243,246,428 A.2d 904, 906 907 (1981).

the Superior Court master which the instant litigation seeks no more than to reopen and retry. Such review demonstrates that the order is in full accord with New Hampshire legal principles applicable to petitions to quiet title. See Chao v. The Richey Company, Inc., et al, No. 81-358 (N.H. Dec. 29, 1982).

In short, the constitutional mandate of due process which requires merely an opportunity at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case, Boddie v. Connecticut, 401 U.S. 371, 378 (1971), has been here met, and the instant action is barred by the application of the doctrine of res judicata.[4]

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[4] For cases reaching a similar result with respect to attempts of litigants to retry in federal courts their unsuccessful real property claims in state courts, see Blankner v City of Chicago, 504 F.2d 1037 (7th Cir. 1974), cert. denied, 421 U.S. 948, reh'g denied, 422 U.S. 1029 (1975) (eminent domain); Hanley v. Four Corners Vacation Properties, Inc.,

In conclusion, we note, however, that application of the mandate detailed in Hughes v. Rowe, 445 U.S. 5 (1980), and Christiansburg Garment Company v. EEOC, 434 U.S. 412 (1978), demonstrates that the defendant herein is not entitled to attorney's fees in the instant action, the Court herewith specifically finding and ruling that the shifting law relative to the application of res judicata and collateral estoppel, Roy v. Jasper Corporation, 666 F.2 714 (1st Cir. 1981), is such as to bar a finding that the instant action is frivolous in the sense that attorney's fees are to be afforded defendant.

For the reasons herinabove stated, the order of

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4 (continued)
480 F.2d 536 (10th Cir. 1973) (action to quiet title); Hogan v. Morris, 424 F. 2d 424 (5th Cir. 1970) (partition of property); Billingsley v. Seibels, 433 F. Supp. 1 (N.D. Ala. 1976), aff'd 556 F.2d 276 (5th Cir. 1977), cert. denied, 435 U.S. 929, reh'g denied, 436 U.S. 914 (1978) (petition of quiet title).

the Magistrate with reference to attorney's fees is herewith vacated, but dismissal is herewith ordered on the ground that application of the doctrine of res judicata bars plaintiff from proceeding further with the instant litigation.

SO ORDERED.

Chief Judge
United States District Court

January 14, 1983
cc: Patrick Clooney, pro se
Kendall W. Lane, Esq.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 83-1091

PATRICK CLOONEY,
Plaintiff, Appellant,

v.

TOWN OF HARRISVILLE,
Defendant, Appellee.

BEFORE CAMPBELL, Chief Judge,

BOWNES AND BREYER, Circuit Judges.

ORDER OF COURT

Entered May 4, 1983

We agree with the district court that the case is barred by the doctrine of res judicata. Appellants's belated attempt to raise the lack of a meaningful hearing under Boddie v. Connecticut,

401 U.S. 371 (1971) is meritless. His disagreement with the results of the hearing provides no basis for concluding that the hearing was not meaningful. Indeed, a review of the Master's report indicates a careful analysis and exposition of the issues.

The judgment of the district court is summarily affirmed. 1st Cir. R. 12.

By the Court:
Francis P. Scigliano
Clerk

UNITED STATES COURT OF APPEALS
for the FIRST CIRCUIT
BOSTON, MASSACHUSETTS

5/8/83
83-1091

PATRICK CLOONEY
v
TOWN OF HARRISVILLE

Dear Clerk:

Notice is hereby given that I appeal the Decision Dated May 4, 1983

Patrick Clooney

PATRICK CLOONEY
56 Merrimack Street
Woburn, Mass.

I hereby certify that on (8/18/83) I mailed 3 copies of the Plaintiff's Jurisdictional statement to Howard Lane Jr. Esq.
106 Washington Street
Keene, New Hampshire

Patrick Clooney

PATRICK CLOONEY ProSe
56 Merrimack Street
Woburn, Mass.